



County of San Diego

DEPARTMENT OF PARKS AND RECREATION
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~~November 17, 2023~~ February 29, 2024

MITIGATED NEGATIVE DECLARATION

~~STATE CLEARING HOUSE~~ State Clearinghouse No. ~~No.~~ 2023110494

Project Name: Tijuana River Valley Regional Park Habitat Restoration Plan

~~This Document is Considered Draft Until it is Adopted by the Appropriate County of San Diego Decision-Making Body.~~

This Mitigated Negative Declaration is composed of this form as well as the accompanying following Environmental Initial Study documents; which includes, including the following:

~~a. Initial Study Form~~

~~b.~~

~~Attached Habitat Restoration Plan and extended studies for biological resources, cultural resources, and air quality/greenhouse gas calculations.~~

a. Initial Study Form including and attached the attached Habitat Restoration Plan, and technical studies for biological resources, cultural resources, and air quality/greenhouse gas calculations

b. Comments and responses to comments on the Mitigated Negative Declaration

c. Mitigation Monitoring and Reporting Program (MMRP)

1. California Environmental Quality Act Negative Declaration Findings:

Find that this Mitigated Negative Declaration reflects the decision-making body's independent judgment and analysis, and that the decision-making body has reviewed and considered the information contained in this Mitigated Negative Declaration and the comments received during the public review period, and on the basis of the whole record before the decision-making body (including this Mitigated Negative Declaration) that there is no substantial evidence that the project will have a significant effect on the environment.

2. Required Mitigation Measures:

Refer to the attached Environmental Initial Study for the rationale for requiring the following measures:

A. Biological Resources

- MM-BIO-1** Grubbing or clearing of vegetation of any phase of the Proposed Project during the general avian breeding season (February 1 to September 15), least Bell's vireo breeding season (March 15 to September 15), coastal California gnatcatcher breeding season (March 1 to August 15), or raptor breeding season (January 15 to July 15) shall be avoided to the extent feasible. If grubbing, clearing, or grading would occur during the breeding season, a pre-construction survey shall be conducted by a qualified biologist no more than three days prior to the commencement of activities to determine if active bird nests are present in the affected areas. If there are no nesting birds (includes nest building or other breeding/nesting behavior) within 300 feet of the survey area (500 feet for raptors), clearing, grubbing, and grading shall be allowed to proceed in that area. Furthermore, if clearing, grubbing, or grading activities are to resume in an area where they have not occurred for a period of seven or more days during the breeding season, an updated survey for avian nesting will be conducted by a qualified biologist within three days prior to the commencement of clearing, grubbing, or grading activities in that area. If active nests or nesting birds are observed within 300 feet of the survey area (500 feet for raptors), the biologist shall flag a buffer around the active nests, and clearing, grubbing, or grading activities shall not occur within 300 feet of active nests (500 feet for raptors) until nesting behavior has ceased, nests have failed, or young have fledged as determined by a qualified biologist. If the qualified biologist determines that the species will not be impacted with a reduced buffer (i.e., less than 300 feet for general avian species and 500 feet for raptors), potentially with the implementation of avoidance measures to reduce noise, as necessary, and/or the qualified biologist monitors the active nest during clearing, grubbing, or grading to ensure no impacts to the species occur, these activities may occur outside the reduced buffer during the breeding season, as long as the species is not impacted.
- MM-BIO-2** If heavy equipment would be in operation in any phase of the Proposed Project during the breeding season for least Bell's vireo (March 15 to September 15), coastal California gnatcatcher (March 1 to August 15), or raptors (January 15 to July 15), pre-construction survey(s) shall be conducted by a qualified biologist, as appropriate, to determine whether these species occur within the areas potentially impacted by noise. If pre construction surveys determine that active nests belonging to these species are absent from the potential impact area (within 300 feet for vireo or gnatcatcher, 500 feet for raptors, or as otherwise determined by a qualified biologist), clearing, grubbing, and grading shall be allowed to

proceed. If pre-construction surveys determine the presence of active nests belonging to these species, then clearing, grubbing, and grading within 300 feet of the nest location(s) for vireo or gnatcatcher and 500 feet for raptors, shall: (1) be postponed until a permitted biologist determines the nest is no longer active; (2) be allowed to continue if nest monitoring by a qualified biologist determines that noise levels are not adversely affecting the nesting birds; or (3) not occur until a temporary noise barrier or berm is constructed at the edge of the clearing, grubbing, or grading footprint and/or around the piece of equipment to ensure that noise levels are reduced to below 60 A-weighted decibels (dBA) or ambient at the nest location. Decibel output for Item (3) will be confirmed by a qualified noise specialist and intermittent monitoring by a qualified biologist will be required to ensure that conditions have not changed.

MM-BIO-3 Mitigation for impacts occurring within all phases of the Proposed Project to six individuals of San Diego marsh elder, a CRPR 2B.2 and County List B plant species, shall occur through the inclusion of this species in the Proposed Project's restoration plant palette.

MM-BIO-4 Mitigation for impacts occurring within all phases of the Proposed Project to 68 individuals of singlewhorl burrobrush, a CRPR 2B.2 plant species, shall occur through the inclusion of this species in the Proposed Project's restoration plant palette.

MM-BIO-5 The following Quino conservation measures apply in Phase 12, shown as Quino Checkerspot Butterfly Avoidance Area on Figures 14a and 14e-14f of Appendix C to this IS/MND.

Step 1, Survey

- Additional Quino host plant mapping conducted prior to construction when host plants are blooming, in order to ensure host plant patches are delineated to the greatest extent feasible.
- During host plant mapping, host plant patches will be mapped using GPS so they can be flagged prior to construction.

Step 2, Avoidance and Minimization Measures

- Following host plant mapping, realign or leave potential restoration areas unimproved, as needed, to avoid direct impacts to host plants as much as possible.
- All construction within mapped Quino host plant patches will be prohibited during the Quino flight season (defined as the third week of February through the second Saturday in May).

- A qualified biologist will intermittently monitor construction within the Quino Avoidance Area to ensure that all flagged and mapped host plant locations planned for avoidance are avoided.
- The qualified biologist will conduct environmental awareness training for all contractors entering the site during the construction of the Proposed Project.
- Following restoration installation, maintenance activities in areas supporting Quino host plants within the Quino Avoidance Area shall either occur outside of the Quino flight season or be monitored, as appropriate, by a qualified biologist.
- Install signs and/or fencing along the avoided host plants stating, “Environmentally sensitive area. Please stay on trail,” or similar language.

Step 3, Compensatory Mitigation

If the restoration cannot be redesigned to avoid impacts to all occupied Quino host plant patches, then in addition to the surveys and avoidance and minimization measures in Steps 1 and 2 above, consultation with USFWS will be required. Mitigation may consist of one or a combination of on- or off-site planting of host plants, providing long-term maintenance of existing host plants, preserving occupied Quino habitat, or similar measures to the satisfaction of the USFWS.

MM-BIO-6 Impacts to jurisdictional wetland and waterway resources require permits and authorizations by the U.S. Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), and California Department of Fish and Wildlife prior to impacts. The County shall acquire appropriate permits and approvals from the resource agencies prior to impacts.

MM-BIO-7 A Habitat Restoration Plan addressing impacts and subsequent restoration of wetland habitat and jurisdictional waters, as well as sensitive upland habitats, shall be submitted to the County for review and approval. The Plan shall also be submitted to the U.S. Army Corps of Engineers (USACE), California Department of Fish and Wildlife (CDFW), and Regional Water Quality Control Board (RWQCB) for review and approval, with scope of review limited to impacts within each Agency’s jurisdictional extent, as applicable.

- MM-BIO-8** To help ensure errant impacts to sensitive vegetation communities outside of the impact footprint are avoided during construction, temporary environmental fencing (including silt fencing where determined necessary by the Stormwater Pollution Prevention Plan [SWPPP]), would be installed at the edges of the impact limits prior to initiation of grading. All construction staging shall occur within the approved limits of construction.
- MM-BIO-9** A qualified biologist shall monitor the installation of environmental fencing wherever it would abut sensitive vegetation communities, jurisdictional waters or wetlands, or open space. The biologist also would conduct a pre-construction environmental training session for construction personnel prior to all phases of restoration to inform them of the sensitive biological resources on-site and avoidance measures to remain in compliance with Proposed Project approvals. The biologist shall monitor the initial vegetation clearing, grubbing, and grading activities to ensure that activities occur within the approved limits of work and avoid impacts to nesting birds. The biologist shall periodically monitor the limits of construction and restoration to ensure that restoration and avoidance areas are delineated with temporary fencing and that the fencing remains intact. As part of the pre-construction survey and periodic monitoring, construction personnel will review trenches and holes for entrapped wildlife prior to construction including pipes, culverts, and similar construction materials. If sensitive wildlife species are observed during the pre-construction survey, a qualified biologist shall require additional measures to reduce potential impacts.

B. Cultural Resources

- MM-CUL-1** Prior to the finalization of each Execution Plan that will be prepared as implementation documents for the twelve phases under the guidance of the HRP, DPR will retain a cultural resource specialist who is a qualified archaeologist(s) meeting the Secretary of the Interior's Professional Qualifications Standards, as promulgated in Code of Federal Regulations, Title 36, Section 61. The supervision of the cultural resources avoidance and monitoring programs will be the responsibility of the cultural resource specialist. Once the specific location and size of each Proposed Project phase are identified, the cultural resource specialist will conduct a review of cultural resources information to confirm or identify any additional potential impacts to archaeological sites. The review will focus on the phased restoration activity areas that may involve mechanized clearing and topographic modification restoration techniques and contain recorded cultural resources. Known cultural resources within the phased restoration activity areas will be updated as appropriate, and significant, or potentially significant (e.g., unevaluated) resources, identified as 'high cultural resources sensitivity' areas (see Figure 8 of Appendix D) will be

confirmed. In order to minimize impacts to known cultural resources and disturbance of subsurface archaeological deposits, the cultural resource specialist will flag areas for avoidance per **MM-CUL-2** and provide oversight during the implementation of cultural resources monitoring (**MM-CUL-3**).

MM-CUL-2 Cultural resources 37-008602, P-37-010487, P-37-010488, P-37-010669, P 37-011096, P-37-011099, P-37-011946, and P-37-025919 shall be identified as ‘high cultural resources sensitivity’ areas in order to ensure no adverse impacts to the resources occur. If the cultural resource review (MM-CUL-1) identifies any additional significant, or potentially significant resources, they shall also be identified as ‘high cultural resources sensitivity’ areas.

- The established ‘high cultural resources sensitivity’ area shall consist of the recorded site boundary and a 100-foot buffer and be established by the cultural resource specialist in consultation with DPR and the habitat restoration designer to ensure the resources are not adversely impacted directly or indirectly.
- The ‘high cultural resources sensitivity’ locations shall be provided to the habitat restoration designer during the preparation of the Execution Plan, and the locations shall be avoided by all Proposed Project design considerations for mechanized clearing and topographic modification restoration measures. If during the preparation of the Execution Plan, it is determined that avoidance of a ‘high cultural resources sensitivity’ location proves infeasible, additional measures are to be developed for inclusion in the Execution Plan to be approved by DPR, including appropriate methodologies to address the preservation, minimization of impacts, or mitigation of potential impacts/adverse effects to significant cultural/historical resources.
- Prior to Proposed Project activities involving ground disturbance, the ‘high cultural resources sensitivity’ areas shall be temporarily flagged with oversight by the cultural resource specialist.

MM-CUL-3: DPR shall retain a qualified archaeologist/cultural resource specialist and a Native American representative to monitor ground-disturbing activities related to the implementation of the HRP (excluding shallow planting) occurring within the ‘high cultural resources sensitivity’ areas. The monitoring program shall include attendance by the cultural resource specialist and Native American monitor at a pre-construction meeting with construction personnel for the phase to provide environmental training to all personnel of the cultural resources sensitivity of the area; outline protocols to follow in the event inadvertent cultural resources are identified; and to discuss monitoring scheduling and coordination.

- Restoration activities involving ground-disturbance (excluding shallow planting) occurring within the ‘high cultural resources sensitivity’ areas (MM-CUL-2) shall be monitored by an archaeological monitor; in addition, restoration activities involving ground-disturbance within an ‘high cultural resources sensitivity’ area surrounding prehistoric archaeological resources shall be monitored by a Native American monitor.
- Both archaeological and Native American monitors shall have the authority to temporarily halt or redirect grading and other ground-disturbing activity in the event that cultural resources are encountered. Isolates and non-significant deposits shall be minimally documented in the field and recorded on appropriate DPR site forms. If significant or potentially cultural material is encountered, appropriate actions shall be implemented according to the protocols outlined in the monitoring plan.
- If the archaeological monitor, in conjunction with the cultural resource specialist and Native American monitor, determines that monitoring of ground-disturbing activities related to the implementation of the HRP is no longer warranted within the ‘high cultural resources sensitivity’ due to the disturbances resulting from natural alluvial erosion and human impacts within the TRVRP, the DPR should be informed as such and will make the final determination on the necessity for additional monitoring.

MM-CUL-4 Should human remains be identified during ground-disturbing activities related to the implementation of the Proposed Project, whether during construction, maintenance, or any other activity, State Public Resources Code Section 5097.98, CEQA Section 15064.5 and Health & Safety Code Section 7050.5 and County-mandated procedures will be followed for the treatment and disposition of those remains, as follows.

- A County (DPR) official is contacted.
- Upon identification of human remains, there will be no further excavation or disturbance in the area of the find or any nearby area reasonably suspected to overlie adjacent human remains until the County Coroner has made the necessary findings as to origin. If the human remains are to be taken offsite for evaluation, they shall be accompanied by the Kumeyaay Native American monitor.
- If the remains are determined to be of Native American origin, the coroner will contact the NAHC within 24 hours. The NAHC will identify a Most Likely Descendant (MLD), the person or persons it believes to be most likely descended from the deceased Native American.

- The immediate vicinity where the Native American human remains are located is not to be damaged or disturbed by further development activity until consultation with the MLD regarding their recommendations as required by Public Resources Code Section 5097.98 has been conducted.
- The MLD, as identified by the NAHC, shall be contacted by DPR or their representative in order to determine proper treatment and disposition of the remains. The MLD may make recommendations to the landowner (DPR), or the person responsible for the excavation work, for the treatment of human remains and any associated grave goods as provided in Public Resources Code Section 5097.98.

C. Paleontological Resources

MM-PAL-1a A qualified paleontologist shall be at the pre-construction meeting(s) to consult with the grading and excavation contractors concerning excavation schedules, paleontological field techniques and safety issues. A qualified paleontologist is defined as an individual having an M.S. or Ph.D. degree in paleontology or geology who is familiar with paleontological procedures and techniques, is knowledgeable in the geology and paleontology of San Diego County, and who has worked as a paleontological mitigation project supervisor in the County for at least one year.

MM-PAL-1b A qualified paleontological monitor shall be on site on a full-time basis during the original cutting of previously undisturbed deposits of the San Diego Formation, Lindavista Formation, and Bay Point Formation to inspect exposures for contained fossils. A qualified paleontological monitor is defined as an individual having experience in the collection and salvage of fossil materials. The paleontological monitor shall work under the direction of a qualified paleontologist. If the qualified paleontologist or paleontological monitor ascertains that observed exposures of the San Diego Formation, Lindavista Formation, and Bay Point Formation are not fossil-bearing, the qualified paleontologist shall have the authority to terminate the monitoring program.

MM-PAL-1c If fossils are discovered during monitoring of the San Diego Formation, Lindavista Formation, and Bay Point Formation, they shall be recovered by the qualified paleontologist or paleontological monitor. In most cases, fossil salvage can be completed in a short period of time, although some fossil specimens (such as a complete large mammal skeleton) may require an extended salvage period. In these instances, the paleontologist (or paleontological monitor) shall be allowed to temporarily direct, divert, or halt grading to allow recovery of fossil remains in a timely manner. Because of the potential for recovering small fossil remains, such as

isolated mammal teeth, it may be necessary to set up a screen-washing operation on the recovery site.

If a fossil of greater than 12 inches in any dimension, including circumference, is encountered during excavation or grading of the San Diego Formation, Lindavista Formation, and Bay Point Formation, all excavation operations in the area where the fossil was found shall be suspended immediately, the County Planning and Development Services (PDS) Permit Compliance Coordinator shall be notified, the Proposed Project Paleontologist shall assess the significance of the find and, if the fossil is significant, the Proposed Project Paleontologist shall oversee the salvage program, including salvaging, cleaning, and curating the fossil(s), and documenting the find (as outlined below).

- MM-PAL-1d** If any sub-surface bones or other potential fossils are found anywhere within the Proposed Project impact footprint by construction personnel in the absence of a qualified paleontologist or paleontological monitor, the qualified paleontologist shall be notified immediately to assess their significance and make further recommendations.
- MM-PAL-1e** Fossil remains collected during monitoring and salvage shall be cleaned, repaired, sorted, and cataloged as part of the mitigation program.
- MM-PAL-1f** Prepared fossils, along with copies of all pertinent field notes, photos, and maps, shall be deposited (as a donation) in a scientific institution with permanent paleontological collections such as the San Diego Natural History Museum. Donation of the fossils shall be accompanied by financial support from the applicant for initial specimen storage.
- MM-PAL-1g** A final summary report outlining the results of the mitigation program shall be prepared by a qualified paleontologist and submitted to the County of San Diego for concurrence. This report shall include discussions of the methods used, stratigraphic section(s) exposed, fossils collected, and significance of recovered fossils.

3. Critical Project Design Elements:

The following project design elements were the result of compliance with specific environmental laws and regulations and were essential in reaching the conclusions within the attached Environmental Initial Study. While the following are not technically mitigation measures, their implementation must be assured to avoid potentially significant environmental effects.

A. Geology and Soils

1. The proposed project would comply with the State Water Resource Control Board National Pollution Discharge Elimination System General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (i.e., General Construction Permit). Compliance with the General Construction Permit would require the preparation of a Stormwater Pollution Prevention Plan (SWPPP) outlining best management practices to prevent soil erosion and runoff from the construction site.

B. Hazards and Hazardous Materials

1. The Proposed Project will not expose people or structures to a significant risk of loss, injury, or death involving wildland fires because the proposed project will comply with the regulations relating to emergency access, water supply, and defensible space specified in the County Code of Regulatory Ordinances, Title 3, Division 5, Chapter 3, and Appendix II-A of the Uniform Fire Code.

C. Hydrology and Water Quality

1. The Proposed Project would conform to Countywide watershed standards in the BMP Design Manual, derived from State regulation to address water quality concerns. The Proposed Project also requires a National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Construction Activities. Compliance with the General Construction Permit would require the preparation of a SWPPP outlining BMPs that would be implemented during construction activities to prevent pollutants from entering nearby water bodies. The proposed project will comply with all requirements of these permits.

D. Noise

1. The proposed project will not generate construction noise that may exceed the standards of the County of San Diego Noise Ordinance (Section 36-410). Construction operations will occur only during permitted hours of operation pursuant to Section 36-410.

ADOPTION STATEMENT: The Final Mitigated Negative Declaration was adopted and the above California Environmental Quality Act findings made by the County of San Diego Director of Parks and Recreation on March 1, 2024. ~~is document is considered draft until it is adopted by the appropriate County of San Diego decision-making body. The document will be signed at that time.~~

Signature

Date

~~Resource Management Division~~ Crystal Benham, Chief
Department of Parks and Recreation

County of San Diego Department of Parks and Recreation

Attachments:

A - California Environmental Quality Act Initial Study

B – Responses to Comments

C – Mitigation Monitoring and Reporting Program